

CSD 1001A [11/15/04]

Name, Address, Telephone No. & I.D. No.

Fred C. James, Esq. (SBN# 69040)

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UNITED STATES BANKRUPTCY COURT



SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

PETER L. GAUGHEN

Debtor.

BANKRUPTCY NO.: 03-00010-H12

Date of Hearing: June 16, 2005

Time of Hearing: 9:00 a.m.

Name of Judge: Hon. John J. Hargrove

**ORDER AFTER HEARING ON
MOTION TO DISMISS DEBTOR'S CHAPTER 12 PETITION AND/OR TO DENY DISCHARGE OF
DEBTOR'S DEBTS OWING TO SILVER MOUNTAIN CHRISTMAS TREES**

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through three (3) with exhibits, if any, for a total of 3 pages, is granted. Motion/Application Docket Entry No. 123

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DATED: July 26, 2005

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

GUEVARA, PHIPPARD & JAMES, P.C.

By: 

Fred C. James, Attorney for Movant,
Silver Mountain Christmas Trees


Judge, United States Bankruptcy Court

ORDER AFTER HEARING ON MOTION TO DISMISS DEBTOR'S CHAPTER 12 PETITION AND/OR DENY DISCHARGE
OF DEBTOR'S DEBTS OWING TO SILVER MOUNTAIN CHRISTMAS TREES

DEBTOR: PETER L. GAUGHEN

CASE NO: 03-00010-H12

IT APPEARING that Silver Mountain's Notice of Hearing and Motion to Dismiss Debtor's Chapter 12 Petition and/or Deny Discharge of Debtor's Debts Owing to Silver Mountain Christmas Trees was noticed January 21, 2005, and Silver Mountain's Amended Notice of Hearing and Motion to Dismiss Debtor's Chapter 12 Petition and/or Deny Discharge of Debtor's Debts Owing to Silver Mountain Christmas Trees was noticed January 25, 2005, and

IT FURTHER APPEARING that a hearing was held on February 25, 2005, at 10:00 a.m. in Department 3. David Skelton appeared as Trustee. David Britton appeared for Debtor. Fred C. James appeared for Silver Mountain. It was ordered that the matter be treated as a contested matter with declarations in lieu of direct testimony and a status conference was set for April 27, 2005, at 2:00 p.m. in Department 3.

IT FURTHER APPEARING that a status conference regarding Silver Mountain's Motion to Dismiss Debtor's Chapter 12 Petition and/or Deny Discharge of Debtor's Debts Owing to Silver Mountain Christmas Trees was held on April 27, 2005, at 2:00 p.m. in Department 3 and a hearing date was set for June 16, 2005 at 9:00 a.m. in Department 3.

IT FURTHER APPEARING that a hearing on Silver Mountain's Motion to Dismiss Debtor's Chapter 12 Petition and/or Deny Discharge of Debtor's Debts Owing to Silver Mountain Christmas Trees was held on June 16, 2005 at 9:00 a.m. in Department 3. David Britton appeared for Debtor. Fred C. James appeared for Silver Mountain.

IT FURTHER APPEARING that the following witnesses appeared and testified: 1) James C. Kostas; 2) Jim Heater; 3) Shirley K. Heater; 4) Grady Euteneier; 5) Greg D. Reid; 6) Melani Kent; 7) Keith Herron; 8) Carol Nickel; 9) Fred C. James; and 10) Madelyn Vallone.

IT FURTHER APPEARING that the Debtor filed this Chapter 12 proceeding listing only three creditors, none of which were Silver Mountain Christmas Trees, Alpine Farms or Northwest Tree Sales.

IT FURTHER APPEARING that clear and convincing evidence exists that Silver Mountain Christmas Trees, Alpine Farms or Northwest Tree Sales did not receive notice of the case in time to permit the filing of a claim and were thus each denied due process of law.

Upon the hearing, the testimony of witnesses, all other evidence before the court and all pleadings filed by the parties, and clear and convincing evidence appearing therefore;

IT IS SO ORDERED as follows:

1. That Silver Mountain Christmas Trees, Alpine Farms and Northwest Tree Sales are not bound by the Debtor's Chapter 12 plan;

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ORDER AFTER HEARING ON MOTION TO DISMISS DEBTOR'S CHAPTER 12 PETITION AND/OR DENY DISCHARGE
OF DEBTOR'S DEBTS OWING TO SILVER MOUNTAIN CHRISTMAS TREES

DEBTOR: PETER L. GAUGHEN

CASE NO: 03-00010-H12

2. That the Debtor's debts owing to Silver Mountain Christmas Trees, Alpine Farms and Northwest Tree Sales are excepted from discharge;

3. That the Debtor is denied a discharge for his debts owing to Silver Mountain Christmas Trees, Alpine Farms and Northwest Tree Sales;

4. That Silver Mountain Christmas Trees, Alpine Farms and Northwest Tree Sales are not bound by a discharge injunction; and

5. That Silver Mountain Christmas Trees, Alpine Farms and Northwest Tree Sales may proceed and collect the debts owed to each of them from the Debtor.

sdw\0898\001\pleading\2004-2005\32-order-deny discharge

CSD 3010 [04/28/96]
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619-531-0123 / 619-544-0056 (f)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

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U.S. BANKRUPTCY CT.
SO. DIST OF CALIF

In Re
PETER LYNN GAUGHEN Debtor. BANKRUPTCY NO. 03-00010-H12

PROOF OF SERVICE

I, Carol L. Nickel, certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that I served a copy of the following documents [describe each document served]: **NOTICE OF LODGMENT OR ORDER**

on July 12, 2005 by:

☐ Mail Service - Express Mail, United States mail, postage fully pre-paid, addressed to:

☒ **Personal Service** - I delivered the documents to American Messenger Service to be personally served on the following named person(s) or an officer or agent of the person(s):

David E. Britton
Lockhart & Britton
7777 Alvarado Road #422
La Mesa, CA 91941

David L. Skelton, Trustee
600 "B" Street #2000
San Diego, CA 92101

U.S. Trustee
Department of Justice
402 W. Broadway, Suite 600
San Diego, CA 92101

☐ Residence Service - By leaving the documents with the following adult at:

Under penalty of perjury, I declare that the foregoing is true and correct.

July 12, 2005
[Date]


[Signature]

Print Name	Carol L. Nickel
Business Address	Guevara, Phippard & James PC, 1420 Kettner Blvd., Suite 600
City, State, ZIP	San Diego, CA 92101